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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF OREGON

12 SUSAN K. POWERS,

Civil No. 09-394-AA
OPINION AND ORDER

13 Plaintiff,

14 vs.

15 MICHAEL J. ASTRUE,
Commissioner of Social Security,

16 Defendant.
17

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1 AIKEN, Chief Judge:

2 Claimant, Susan Powers, brings this action pursuant to the
3 Social Security Act (the Act), 42 U.S.C. §§ 405(g) and
4 1383(c)(3), to obtain judicial review of a final decision of the
5 Commissioner denying her application for disability insurance
6 benefits under Title II of the Act and for Supplemental Security
7 Income (SSI) disability benefits under Title XVI of the Act. For
8 the reasons set forth below, the Commissioner's decision is
9 affirmed and this case is dismissed.

10 **PROCEDURAL BACKGROUND**

11 Plaintiff protectively filed applications for SSI and DIB
12 on February 11, 2005. Tr. 16, 73-75. She alleged disability
13 beginning January 1, 1994 due to depression, anxiety, obesity,
14 chronic diarrhea and foot damage due to a frostbite injury. Tr.
15 118. After plaintiff's claim was denied initially and upon
16 reconsideration, an Administrative Law Judge (ALJ) hearing was
17 conducted on November 20, 2007. Tr. 800-07. The ALJ agreed to
18 schedule supplemental proceedings to allow time for updating
19 the record. On April 21, 2008, the ALJ reconvened the hearing.
20 On July 19, 2008, the ALJ issued a decision denying her
21 application. Tr. 13-28. On March 13, 2009, the Appeals
22 Council declined review, and plaintiff filed the lawsuit at bar.
23 Tr. 6-9. Plaintiff's date last insured was September 30, 1999.
24 Tr. 68.

25 **STATEMENT OF THE FACTS**

26 Born in 1958, plaintiff was 35 years old on her alleged
27 disability onset date of January 1, 1994. Tr. 16,18. She was
28 considered a younger individual. 20 C.F.R. § 404.1563(b).

1 Plaintiff has a ninth grade education and has past work as a
2 bartender, convenient store clerk, cocktail waitress, and short-
3 order cook. Tr. 26.

4 STANDARD OF REVIEW

5 This court must affirm the Secretary's decision if it is
6 based on proper legal standards and the findings are supported by
7 substantial evidence in the record. *Hammock v. Bowen*, 879 F.2d
8 498, 501 (9th Cir. 1989). Substantial evidence is "more than a
9 mere scintilla. It means such relevant evidence as a reasonable
10 mind might accept as adequate to support a conclusion."
11 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting
12 *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).
13 The court must weigh "both the evidence that supports and
14 detracts from the Secretary's conclusion." *Martinez v. Heckler*,
15 807 F.2d 771, 772 (9th Cir. 1986).

16 The initial burden of proof rests upon the claimant to
17 establish disability. *Howard v. Heckler*, 782 F.2d 1484, 1486
18 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate
19 an "inability to engage in any substantial gainful activity by
20 reason of any medically determinable physical or mental
21 impairment which can be expected . . . to last for a continuous
22 period of not less than 12 months. . . ." 42 U.S.C. §
23 423(d)(1)(A).

24 The Secretary has established a five-step sequential
25 process for determining whether a person is disabled. *Bowen v.*
26 *Yuckert*, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520,
27 416.920. First the Secretary determines whether a claimant is
28 engaged in "substantial gainful activity." If so, the claimant

1 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 In step two the Secretary determines whether the claimant
4 has a "medically severe impairment or combination of
5 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.
6 §§ 404.1520(c), 416.920(c). If not, the claimant is not
7 disabled.

8 In step three the Secretary determines whether the
9 impairment meets or equals "one of a number of listed impairments
10 that the Secretary acknowledges are so severe as to preclude
11 substantial gainful activity." Id.; see 20 C.F.R. §§
12 404.1520(d), 416.920(d). If so, the claimant is conclusively
13 presumed disabled; if not, the Secretary proceeds to step four.
14 Yuckert, 482 U.S. at 141.

15 In step four the Secretary determines whether the claimant
16 can still perform "past relevant work." 20 C.F.R. §§
17 404.1520(e), 416.920(e). If the claimant can work, she is not
18 disabled. If she cannot perform past relevant work, the burden
19 shifts to the Secretary. In step five, the Secretary must
20 establish that the claimant can perform other work. Yuckert, 482
21 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e)-(g), 416.920(e)-(g).
22 If the Secretary meets this burden and proves that the claimant
23 is able to perform other work which exists in the national
24 economy, she is not disabled. 20 C.F.R. §§ 404.1566, 416.966.

26 DISCUSSION

27 1. The ALJ's Findings

28 At step one, the ALJ found that plaintiff had not engaged

1 in substantial gainful activity since her alleged disability
2 onset date of January 1, 1994. Tr. 18, Finding 2.

3 At step two, the ALJ found that plaintiff had the following
4 severe impairments: obesity, spondylosis; "gouty" arthropathy;
5 and depressive disorder, not otherwise specified. Tr. 18,
6 Finding 3.

7 At step three, the ALJ found that plaintiff's impairments
8 did not meet or equal the requirements of a listed impairment.
9 Tr. 22, Finding 4.

10 The ALJ determined that plaintiff had a residual functional
11 capacity to perform light work. Plaintiff is able to read,
12 write, add and subtract simple numbers. She is right-handed and
13 able to sit two hours at one time for a total of eight hours
14 during a full-time eight-hour workday with normal breaks. She
15 is able to stand and/or walk one hour at a time for a total of
16 six hours during a full-time eight-hour workday. After standing
17 or walking, she can sit either a few minutes or up to two hours
18 before returning to walking or standing. She is able to lift
19 and/or carry 20 pounds occasionally (i.e. up to one-third of the
20 workday) and 10 pounds frequently (i.e. up to two-thirds of the
21 workday). Due to obesity, she should avoid crouching, crawling,
22 kneeling, squatting and climbing (e.g. ladders, scaffolds and
23 ropes). She can occasionally stoop, bend and climb (e.g. stairs
24 and ramps). She can push and pull within the pound limits
25 identified above. She should avoid balancing and exposure to
26 hazards (e.g. unprotected heights and machinery). She is limited
27 to simple, routine and repetitive tasks. She should avoid
28 contact with the general public and has mild (i.e. generally

1 functioning well) limits on her capacity to interact
2 appropriately with co-workers and supervisors. She has moderate
3 difficulty (i.e. limited, but functioning satisfactorily)
4 responding appropriately to usual work situations, changes in
5 work settings and concentration. Tr. 23-24, Finding 5.

6 At step four, the ALJ found that plaintiff was not able to
7 perform her past relevant work. Tr. 26, Finding 6.

8 At step five, the ALJ found that, based on the above
9 residual functional capacity, and the testimony of the vocational
10 expert, plaintiff could perform work existing in significant
11 numbers in the national economy; specifically noting the
12 positions identified by the vocational expert: assembler - small
13 products, cleaner/polisher - small products, and inspector. Tr.
14 27, Finding 10.

15 2. Plaintiff's Allegations of Error

16 A. Opinion of Treating Physician Dr. Lynch

17 Plaintiff alleges that the ALJ failed to adequately credit
18 the disability opinion of treating physician Dr. Lynch without
19 providing specific and legitimate reasons supported by
20 substantial evidence.

21 If another doctor's opinion contradicts the treating
22 doctor's opinion, as here, the Commissioner may reject this
23 opinion for "specific and legitimate reasons." Lester v. Chater,
24 81 F.3d 830-31 (9th Cir. 1995). When there is conflicting
25 evidence, the Commissioner must determine credibility and
26 resolve the conflict. Thomas v. Barnhart, 278 F.3d 947,, 956 (9th
27 Cir. 2002) (internal quotation omitted). In resolving questions
28 of credibility and conflicting evidence, an ALJ's findings "must

1 be supported by specific, cogent reasons." Reddick v. Chater,
2 157 F.3d 715, 722 (9th Cir. 1998). The ALJ can accomplish this by
3 "setting out a detailed and thorough summary of the facts and
4 conflicting clinical evidence, stating his interpretation
5 thereof, and making findings." Id. The trier of fact must
6 resolve conflicts in the evidence and, if the evidence can
7 support either outcome, the court may not substitute its judgment
8 for that of the ALJ. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th
9 Cir. 1992).

10 The ALJ here met this burden by setting out a detailed and
11 thorough summary of the facts and conflicting clinical evidence,
12 and making specific findings on that conflicting evidence.
13 Tr. 18-26. The ALJ specifically noted Dr. Lynch's opinion and
14 gave it little weight. Tr. 21-22. In analyzing Dr. Lynch's
15 opinion, the ALJ noted that Dr. Lynch failed to identify any
16 specific functional limitations that precluded employment. Tr.
17 21, 561. As noted above, an ALJ may reject a medical opinion
18 that is brief, conclusory and inadequately supported by clinical
19 findings. Thomas, 278 F.3d at 957. Because Dr. Lynch's opinion
20 failed to identify any specific findings or limitations to
21 support his conclusion, the ALJ properly gave it little weight.

22 The ALJ also properly cited plaintiff's conservative
23 treatment history to support her analysis of Dr. Lynch's
24 disability opinion. Tr. 18-26. An ALJ may use a conservative
25 treatment history for assessing credibility. Tommasetti v.
26 Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008). Finally, the ALJ
27 also relied on plaintiff's ability to engage in numerous
28 activities that contradicted Dr. Lynch's disability opinion. The

1 ALJ first relied on the fact that plaintiff engaged in work
2 activity in 1994 and 1997. Tr. 19, 68-77. The ALJ also noted
3 that plaintiff was able to perform several household chores such
4 as cooking, vacuuming, cleaning, washing dishes, laundry, yard
5 work (mowing the lawn, shoveling and hoeing), and grocery
6 shopping. Tr. 119, 22-25. Plaintiff also reported hobbies
7 including dancing, watching television, attending church weekly,
8 spending time with friends, clam digging, and wrestling with her
9 friends. Tr. 19, 22-25, 81-97, 101-08, 379-83, 407, 429, 439,
10 516, 722-40. The ALJ also noted that plaintiff was able to
11 drive an automobile, and use public transportation to accomplish
12 her errands and activities. Tr. 22-24. The ALJ noted that
13 plaintiff was functionally independent regarding both personal
14 hygiene and financial affairs. Tr. 23-25, 81-97, 101-08, 379-83,
15 407, 429, 439, 516, 722-40. Moreover, the ALJ found that Dr.
16 Lynch relied on plaintiff's subjective complaints rather than
17 objective evidence. Tr. 21. An ALJ may reject a medical opinion
18 that is premised upon plaintiff's discredited subjective
19 complaints or contradicted by plaintiff's daily activities.
20 Morgan v. Commissioner, 169 F.3d 595, 601-02 (9th Cir. 1999). A
21 physician's opinion that is premised on plaintiff's subjective
22 complaints is given the same weight as plaintiff's testimony.
23 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The
24 ALJ found plaintiff not credible and plaintiff has not appealed
25 that finding to this court.

26 I find no duty on the part of the ALJ to request a new or
27 more detailed report from Dr. Lynch because the record contained
28 Dr. Lynch's treatment notes. Tr. 538-61, 599-717. Agency

1 regulations do not require the ALJ to request reports in addition
2 to these treatment notes. See 20 C.F.R. §§ 404.1512(e)(1),
3 416.912(e)(1). I find that substantial evidence supports the
4 ALJ's assessment regarding plaintiff's limitations and therefore
5 the ALJ properly evaluated the medical opinion of Dr. Lynch.

6 B. Lay Witness Testimony

7 Plaintiff alleges that the ALJ erred in discrediting the
8 lay witness evidence from her friends and family. An ALJ must
9 provide germane reasons to reject lay witness testimony. Greger
10 v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006). Lay witness
11 testimony regarding plaintiff's symptoms "is competent evidence
12 that an ALJ must take into account" unless the ALJ "expressly
13 determines to disregard such testimony and gives reasons germane
14 to each witness for doing so." Lewis v. Apfel, 236 F.3d 503,
15 511 (9th Cir. 2001).

16 The ALJ reviewed and evaluated the opinions from lay
17 witnesses Ricky Edwards, Patricia Powers and Tamara Koger and did
18 not give them significant weight. Tr. 26. In rejecting this
19 evidence, the ALJ noted that the witnesses testimony and
20 observations were not consistent with plaintiff's conservative
21 treatment history and activities of daily living. Tr. 18-26.
22 The ALJ also noted that despite plaintiff's numerous subjective
23 complaints, the record supports the fact that she received only
24 conservative and routine treatment. Tr. 18-26, 368-76, 653, 667-
25 69. The ALJ noted that plaintiff had not been hospitalized for
26 any significant period of time, her impairments responded well to
27 medications and she had not engaged in any significant mental
28 health counseling or therapy. Tr. 26. The ALJ further rejected

1 the lay witnesses testimony due to their close personal
2 relationships with plaintiff and possible lack of motivation to
3 offer an objective functional assessment. Tr. 26. A valid
4 germane reason for rejecting lay witness opinion is their "close
5 relationship" to plaintiff. Greger, 464 F.3d at 972. I find the
6 ALJ properly considered and rejected the lay witness testimony.

7 C. Residual Functional Capacity

8 Plaintiff alleges that the ALJ erred in her residual
9 functional capacity ("RFC") finding arguing that it failed to
10 properly account for all of plaintiff's limitations. I find the
11 ALJ's RFC finding was appropriate and supported by substantial
12 evidence. In assessing plaintiff's RFC, the ALJ must consider
13 the entire record, and explain how she weighed the medical
14 evidence and testimony. SSR 96-8p. I find that the ALJ
15 satisfactorily considered all of the evidence of record to
16 properly assess plaintiff's RFC. Tr. 18-26. Particularly, the
17 medical evidence of record, including plaintiff's testimony, and
18 the ALJ's lack of credibility finding. Id. As noted above, the
19 ALJ set out a detailed and thorough summary of the facts and
20 conflicting clinical evidence, including findings based on that
21 evidence. Tr. 18-26. I do not find any credible limitations not
22 already accounted for in the ALJ's RFC assessment. Rollins v.
23 Massanari, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ's RFC
24 assessment was supported by the medical evidence in the record
25 and is free of legal error.

26 D. ALJ's Step Five Finding

27 The plaintiff argues that the ALJ's step five finding is
28 not supported by substantial evidence. I disagree and find that

1 the ALJ's step five finding is adequately supported by
2 substantial evidence. The ALJ satisfied the burden of production
3 on this issue through her reliance on the vocational expert's
4 testimony. Tr. 27. See also, Bayliss v. Barnhart, 427 F.3d
5 1211, 1218 (9th Cir. 2005) (vocational expert's "recognized
6 expertise provides the necessary foundation").

7 **CONCLUSION**

8 The Commissioner's decision is based on substantial
9 evidence, and is therefore, affirmed. This case is dismissed.
10 IT IS SO ORDERED.

11 Dated this 28 day of July 2010.

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14
15 /s/ Ann Aiken

16 Ann Aiken
17 United States District Judge
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